

## REMARKS

### 1. Objection to the disclosure.

The disclosure of the instant Application has been objected to on the grounds that it is not a "proper" continuation. In particular, the Examiner has indicated that the instant Application may not claim priority as a continuation on parent application Serial No. 09/566,034. The Examiner states:

...this application is not a proper "continuation" of Application Serial No.09/566,034 because it lacks copendency with said prior application. A notice of appeal was filed on September 30, 2003 in Application Serial No. 09/566,034; and since Applicant did not file an appeal brief within 2 months from the date of the notice of appeal, nor did Applicant obtain an extension of time to file this brief, this prior application went abandoned on December 1, 2003. Accordingly, since the instant application was filed on January 26, 2004, it lacks copendency with the prior application which went abandoned on December 1, 2003.

*(Office Action of December 7, 2004, page 2, 1<sup>st</sup> paragraph.)*

Applicants and the Undersigned greatly appreciate the detailed review of the application but must respectfully disagree and submit that a petition for an extension of time was requested sufficient to maintain copendency with the parent application.

Applicants have filed herewith a Petition under 37 C.F.R. 1.181 requesting the withdrawal of the PTO's position that at the time of filing, the instant application lacked copendency with Application Serial No. 09/566,034, (hereafter the "parent application"), and thus is not a proper continuation under 37 C.F.R. 1.53(b). In addition, or in the alternative, Applicants also petition to withdraw the holding of abandonment in the parent application. Applicants also note that a Petition under 37 C.F.R. 1.183 and the requisite fee under 37 C.F.R. 1.17(h) have also been filed herewith, requesting a suspension or waiver of the two month response requirement under 37 C.F.R. 1.181(f).

The Petition under 37 C.F.R. 1.181 is accompanied by Attachments I, II, III, and IV that establish copendency with the parent application at the time of filing and/or the appropriateness of the withdrawal of the holding of abandonment in the parent application.

As indicated in Attachments I and III to the 1.181 Petition, (i.e., the Transmittal and Preliminary Amendment), Applicants requested the filing of a continuation

application under 37. C.F.R 1.53(b). Such a request requires copendency with the identified parent application.

The Petition for the Two Month Extension of Time is set forth in the cover letter (Attachment II) and is referenced in the Preliminary Amendment (Attachment III).

The filing of the continuation application under 1.53(b) (Attachment I) required copendency with the parent application. The need for copendency with the parent application 'triggered' the petition set forth in Attachment II. That is, the filing of a continuation application could not be "timely" unless a Two Month Extension of Time was obtained with regard to the parent application.

Accordingly, as evidenced in Attachments I, II, III, and IV, Applicants sought a Petition for a Two Month Extension of Time in the submission of January 26, 2004 via the cover letter of Attachment II.

In view of Applicants' request for a Two Month Extension of Time, there was copendency between the instant application and the parent application.

Accordingly, Applicants hereby petition to withdraw the PTO's holding that at the time of filing, the instant application lacked copendency with Application Serial No. 09/566,034, and thus is not a proper continuation under 37 C.F.R. 1.53(b). In addition, or in the alternative, Applicants also petition to withdrawal the holding of abandonment in the parent application.

The instant objection to the Disclosure is thus believed to moot in view of the Petitions filed herewith and the accompanying Attachments I-IV. Reconsideration and removal of the objection is respectfully requested.

## **2. Objection to the Amendment of 9/20/04 under 35 U.S.C. §132.**

The amendment of 9/20/04 to the Specification has been objected to under 35 U.S.C. §132 on the grounds that it introduces new matter into the disclosure of the invention.

The foregoing amendment to the Specification is believed to render this objection moot. No new matter has been added with this amendment in view of original claims 7 and 10.

Reconsideration and removal of the objection is respectfully requested.

3. **Provisional rejection of claims 1-15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-6, 8-20, 14 and 15 of copending Application Serial No. 09/867,973.**

Applicants appreciate the detailed basis of rejection.

A terminal disclaimer in compliance with 37 CFR 1.321 (c) is filed herewith with regards to U.S. Serial No. 09/867,973.

Reconsideration and removal of the provisional rejection is respectfully requested.

4. **Rejection of claims 1-15 under 35 U.S.C. 102(b) as being anticipated by claims 2-6, 8-20, 14 and 15 of copending Application Serial No. 09/867,973.**

Applicants appreciate the detailed review of the pending application but must respectfully disagree with the stated basis of rejection. In particular, the facts of this matter are as set forth above in Section 1, and more particularly in the Petition under 37 C.F.R. 1.181, filed herewith, hereby incorporated by reference. As discussed in Section 1, the instant application is believed to be entitled to rely on the filing date of Application Serial No. 09/566,034, since the instant application is a continuation of Application Serial No. 09/867,973.

Reconsideration and removal of the rejection is respectfully requested.

## **CONCLUSION**

Applicants respectfully submit that the Application and pending claims are patentable in view of the foregoing amendments and/or remarks. A Notice of Allowance is respectfully requested. As always, the Examiner is encouraged to contact the Undersigned by telephone if direct conversation would be helpful.

Respectfully Submitted,

  
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